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ARIZONA CORPORATION COMMISSION
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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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DEC 27 2013

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In the matter of:

Docket No. S-20898A-13-0395

Michael J. Blake (CRD #2022161),
a married man,
Respondent.

Respondent Blake's Answer

Respondent Michael J. Blake, answering the Securities Division's Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist and Order of Denial (Notice), admits, denies, and alleges:

General Response

Respondent Michael Blake has been in the investment business for 23 years, and his record was spotless until the recent recession. About ten years ago, while working as a securities salesman for registered securities dealer Carillon Investments, Mr. Blake and a few friends formed Longest Drive LLC. They used this entity to make real estate investments.

1 **Longest Drive LLC**

2 Longest Drive did not structure, operate, or control any of the real
3 estate investments — it was strictly a passive investor. And it was assured
4 in every instance that these real estate investments were *not* securities
5 requiring registration with state or federal regulators.

6 Mr. Blake sought and obtained the written approval of Carillon (and its
7 successor Ameritas Investment Corp.) to participate in this LLC. He
8 complied with all applicable policies, rules, regulations, and statutes. In fact,
9 Mr. Blake's securities dealers audited his office and reviewed records
10 annually. They did not express any concerns or raise any objections
11 regarding Mr. Blake's membership in Longest Drive.

12 Over the years others (mainly friends and family of Mr. Blake or his
13 partners) asked to join Longest Drive. Some were accepted, but only *after*
14 Blake and his co-founders determined the suitability of any prospective new
15 member. It was fully disclosed to each new member that Longest Drive
16 made speculative, risky investments, and that no one should purchase an
17 interest in the LLC unless they could afford to lose their entire investment.

18 All members were treated fairly, and shared proportionately in the
19 LLC's profits and losses. Further, Blake did not receive any fees,
20 commissions, or any compensation for his services to the LLC.

21 **FINRA Order Accepting Offer of Settlement**

22 When the real estate market (as well as most of the world's economies)
23 crashed, Longest Drive's holdings suffered as well. FINRA began an
24 investigation and filed an enforcement action, even though it had not
25 received any complaints regarding the LLC. That action was ultimately
26 settled, as reflected in the Order Accepting Offer of Settlement.

1 Mr. Blake did not admit or deny: (i) the allegations contained in the
2 enforcement complaint; or (ii) the findings and violations contained in the
3 Order. He consented to the entry of the findings and violations “solely for
4 purposes” of FINRA proceedings. And he specifically reserved the “right to
5 take legal or factual positions in litigation or other legal proceedings in
6 which FINRA is not a party.”

7 So Mr. Blake is free to deny the allegations, findings, and violations
8 contained in the Order, which he does now. And the Securities Division
9 cannot use those allegations, findings, or violations as proof of misconduct
10 or liability. Instead, it will have to prove its case from scratch.

11 As part of the settlement, Mr. Blake agreed to a one-year suspension
12 from associating with a FINRA securities dealer, which makes his pending
13 salesman application and the proposed denial a moot point. He also agreed
14 to a fine, which he has paid.

15 Mr. Blake has fully complied with the FINRA Order.

16 **Application for Investment Adviser Representative License**

17 Mid Atlantic Financial Management, Inc. (MAFM) — a federally
18 licensed investment adviser (IA) and an IA notice filer in Arizona — recently
19 asked Mr. Blake to join the firm as an investment adviser representative
20 (IAR). Mr. Blake has completed the required applications, provided all
21 requested information, and paid the applicable fees.

22 The FINRA Order does *not* prevent Mr. Blake from working as an IAR.
23 In fact, FINRA has been fully informed of Mr. Blake’s association and has not
24 objected. MAFM knows all about the FINRA matter, and still wants Mr. Blake
25 to be its representative. And the Securities and Exchange Commission,
26 which regulates IAs and IARs, approved Mr. Blake as an IAR.

Given that MAMF, FINRA, and the SEC, are all onboard with Mr. Blake working as an IAR, Mr. Blake's application should have been treated as no more than a "notice" filing. Instead, the Division denied the IAR application, which prevents Mr. Blake from earning a living in his chosen profession.

There is no statutory basis to deny this application, and the Division cannot prove that it's in the "public interest" to kick Mr. Blake out of the business. This action should be dismissed, and Mr. Blake's application for licensure as an investment adviser representative should be granted.

I. Jurisdiction

1. Admits the allegations contained in paragraph 1 and 2.

II. Respondent

2. Admits the allegations contained in paragraphs 3-9 only to the extent that they are consistent with the documents, rules, regulations, or statutes described or cited; denies the remaining allegations.

III. Facts.

LLC Investments in Grace Communities

3. Admits the allegations contained in paragraphs 10 and 11 only to the extent that they are consistent with the documents, rules, regulations, or statutes described or cited; denies the remaining allegations.

4. Answering paragraph 14 and 15, admits that he provided some individuals (primarily family members and friends) with documents and information regarding three Grace Communities real estate development projects, including subscription agreements and prospectuses; alleges that all information regarding these Grace projects were provided by Grace; alleges that he had nothing to do with the preparation of any documents regarding the Grace projects; denies the remaining allegations.

1 5. Alleges that he lacks the knowledge or information sufficient
2 form a belief as to the truth of the allegations contained in paragraph 16.

3 6. Answering paragraphs 17-19, admits that people typically
4 purchased membership interests in Longest Drive, which then made the
5 Grace investments; admits that profits and losses on any particular Grace
6 project were shared by Longest Drive members based on their percentage
7 of membership interest in the LLC; alleges that he had written approval
8 from either Carillon or Ameritas before entering into the Grace transactions;
9 denies the remaining allegations.

10 7. Answering paragraph 20, admits that the LLC's documents were
11 not amended every time it admitted a new member; allege that Blake kept
12 accurate financial records regarding all members, and which were kept
13 current; allege that all Longest Drive members were allocated profits and
14 losses based on their actual membership interest — regardless of whether
15 amendments to the LLC documents were required or actually made; denies
16 the remaining allegations.

17 8. Answering paragraph 21, alleges that he had no involvement in
18 those note transactions, and that he received no benefit from those
19 transactions; denies the remaining allegations.

20 9. Denies the allegations contained in paragraphs 22-25.

21 **M. Blake's Licensing Status**

22 10. Admits the allegations contained in paragraphs 26-29 only to the
23 extent that they are consistent with the documents, rules, regulations, or
24 statutes described or cited; denies the remaining allegations.

25 11. Answering paragraph 30, admits that he settled with FINRA
26 *without admitting or denying* the allegations, findings, and violations

1 contained in the Order, and that the Order permits him to contest those
2 allegations, findings, and violations in this proceeding; admits the
3 allegations contained only to the extent that they are consistent with the
4 documents, rule, regulations, or statutes described or cited; alleges that this
5 paragraph mischaracterizes and misstates the Order's findings of fact and
6 conclusions of law, and inappropriately implies that the Order (and the
7 allegations contained or referred to) may be used as evidence of guilt,
8 wrongdoing, or liability; denies the remaining allegations.

9 12. Admits the allegations contained in paragraphs 31-33 only to the
10 extent that they are consistent with the documents, rules, regulations, or
11 statutes described or cited; denies the remaining allegations.

12 **IV. Remedies Pursuant to ARS § 44-1962**

13 13. Denies the allegations contained in paragraphs 34 and 35.

14 **V. Remedies Pursuant to ARS § 44-3201**

15 14. Denies the allegations contained in paragraph 36.

17 **Further Response**

18 15. Denies every allegation not specifically admitted.

19 16. Alleges the following affirmative defenses:

- 20 • The Notice fails to state a claim upon which relief can be granted,
21 and fails to allege grounds to deny, revoke, or suspend Blake's
22 registration as a securities salesman or as an investment adviser
23 representative. In fact, ARS § 44-3201.A.10 is, on its face, not applicable
24 because it refers to disciplinary actions taken in connection with
25 membership, licensure, or registration: (i) as a "broker or dealer in
26

1 securities;" or (ii) as an "investment adviser or investment adviser
2 representative," neither of which applies to the FINRA Order.

3 • The mere existence of the FINRA Order is not sufficient grounds
4 for the relief sought by the Division. And the Division cannot argue that
5 the allegations, findings, and violations contained in the Order may be
6 accepted by the Commission as admitted, proven, or true.

7 • Blake complied with all firm policies and guidelines, as well as
8 with all applicable rules, regulations, or statutes. Even if the Division
9 can show technical violations, these violations did not injure, damage,
10 or harm any investors.

11 • Blake acted in good faith, and in reasonable reliance on
12 information and advice received from Grace, Carillon, and Ameritas.

13 • Blake did not receive fees, commissions, or compensation for his
14 mostly-clerical efforts on behalf of Longest Drive and its members.

15 • Longest Drive members were experienced, sophisticated
16 investors, who were given notice of risks and disclosure of all material
17 facts (provided by Grace), and who did not rely on Blake in connection
18 with the real estate investments made through Longest Drive.

19 • Damages, if any, are the result of unrelated, pre-existing, or
20 subsequent conditions unrelated to the Blake's conduct.

21 • There is a lack of causation — or the existence of intervening or
22 supervening causation — that precludes the drawing of any connection
23 between Blake's conduct and the alleged injury, damage, or harm.

24 • The Division failed to add or join indispensable parties, including
25 Grace.

17. Reserves the right to add any affirmative defenses — including those set forth in Ariz. R. Civ. P. 8 — that may become apparent or known through discovery.

Requested Relief

THEREFORE, Blake requests the following relief:

- A. Approval of his application as an IAR;
- B. Placement of his registration as a securities salesman, and his pending application for registration as a securities salesman, in abeyance, on administrative hold, on inactive status, or equivalent, while the FINRA suspension is in effect;
- C. Dismissal of this case in its entirety, with prejudice;
- D. Recovery of his reasonable costs and attorneys' fees, under applicable rules, regulations, or statutes; and
- E. Any other and further relief that is just and appropriate.

Dated: December 26, 2013

M. J. J. J.

Michael Salcido
Attorneys for Respondent Blake

1 **Original** and 10 copies filed with:

2 Docket Control
3 Arizona Corporation Commission
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6 **Copy** mailed and emailed to:

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